

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

May 12, 2005

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, May 12, 2005, at 2:03 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Morris K. Dunlap, Chair; Harold Warner Jr. Vice-Chair; James Barfield; Darrell Downing; John W. McKay Jr.; Bud Hentzen; Ronald Marnell; M.S. Mitchell; Denise Sherman; and Frank Garofalo. Bill Johnson, Elizabeth Bishop and Gary K. Gibbs were not present. Staff members present were: John L. Schlegel, Secretary; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Jess McNeely, Associate Planner; David Barber, Advanced Plans Manager; and Rose Simmering, Recording Secretary.

1. Approval of April 14, 2005 meeting minutes.

MOTION: Approval of April 14, 2005 meeting minutes.

GAROFALO moved, **DOWNING** seconded the motion and it carried. (8-0-2)
MITCHELL and **MCKAY** abstain.

❖ **SUBDIVISION ITEMS**

2. Consideration of Subdivision Committee recommendations from the meeting of May 5, 2005.

2-1. SUB2005-24 – Revised One-Step Final Plat – TIMBER LAKES ESTATES 4th ADDITION, located north of Harry and west of 159th Street East.

NOTE: This replat includes the vacation of two streets and encompasses seven fewer lots. A cul-de-sac is proposed for Timberidge Circle which had been platted as a through street.

STAFF COMMENTS:

- A. The applicant shall guarantee the extension of sanitary sewer and City water. **City Water and Sewer Department** advises that the existing water line extending north from Zimmerly needs to be modified into a typical cul-de-sac configuration. The water line through Lot 12 needs to be abandoned. A guarantee for the water line abandonment and temporary easement will be required. The water meter needs to be relocated. A 20-ft utility easement centered on or abutting the south line of Lot 12 is needed.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- D. The Applicant shall guarantee the paving of the proposed street.
- E. The vicinity map needs to be corrected.
- F. The Applicant has platted a 20-ft building setback along Timberidge Circle which represents an adjustment of the Zoning Code standard of 25 feet for the SF-5, Single-Family District. The Subdivision Regulations permit the setback provisions to be modified by the plat upon the approval of the Planning Commission.
- G. **GIS** needs to comment on the plat's street names. **Street names are approved.**
- H. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet

with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.

- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: Approve subject to staff recommendations.

MITCHELL moved, HENTZEN seconded the motion and it carried 10-0.

2-2. SUB2005-12 – Final Portion of Overall Preliminary Plat – FALCON FALLS 2nd ADDITION, located on the northwest corner of Hillside and 45th Street North.

NOTE: This is an unplatted site located within the City. This final plat consists of the northwest portion of the overall preliminary plat and represents the first phase of development.

STAFF COMMENTS:

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. The Applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on at least one side of all through, non cul-de-sac streets.
- E. The paving guarantee shall include the installation of a temporary turnaround at the terminus of Thunder at the plat's west line. The temporary turnaround shall be denoted on the plat and referenced in the plat's text.
- F. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed."
- G. Since one of the intended uses of Reserve B includes a swimming pool, a site plan shall be submitted with the final plat, for review and approval by the Planning Director. The site plan shall include the information indicated in the Subdivision Regulations. Otherwise a conditional use and public hearing will be needed in the future.
- H. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- I. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- J. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.

- K. Approval of this plat will require a waiver of the lot depth to width ratio of the Subdivision Regulations for Lots 1-12, Block C. The Subdivision Regulations state that the maximum depth of all residential lots shall not exceed 2.5 times the width.
- L. **GIS** needs to comment on the plat's street names. **The spelling of Marblefalls needs to be corrected in two places at the south portion of the plat. Thunder Cir should be labeled within the cul-de-sac.**
- M. The applicant shall submit a copy of the instrument, which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements. Any relocation, lowering or encasement of the pipeline, required by this development, will not be at the expense of the City.
- N. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
- O. An onsite benchmark is needed.
- P. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- Q. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- R. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- S. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- T. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- U. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- V. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- W. Perimeter closure computations shall be submitted with the final plat tracing.
- X. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- Y. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property. **Westar Energy and SBC have requested additional easements.**
- Z. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: Approve subject to staff recommendations.

MITCHELL moved, **HENTZEN** seconded the motion and it carried 10-0.

2-3. SUB2005-45 – One-Step Final Plat – FALCON FALLS COMMERCIAL ADDITION, located on the northwest corner of Hillside and 45th Street North.

NOTE: This is an unplatted site located within the City. A zone change has been approved by MAPC from SF-5, Single-Family Residential to LC, Limited Commercial. The Falcon Falls Commercial Community Unit Plan (CUP2005-14, DP-283) was also approved for the site.

STAFF COMMENTS:

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning

Department for recording.

- C. **City/County Engineering** needs to comment on the status of the applicant's drainage plan. **City Engineering has approved the drainage plan. County Engineering has received a drainage plan as requested.**
- D. **City Engineering** requests the Applicant submit a guarantee for left and right turn lanes along 45th St. North.
- E. **County Engineering** requests the Applicant submit a guarantee for left and right turn lanes for the entrance to Lots 1 and 2, Block A on Hillside.
- F. **County Engineering** recommends closure of the median cut at the right-in right-out opening.
- G. An onsite benchmark is needed.
- H. In accordance with the CUP approval, a cross-lot circulation agreement is needed to assure internal vehicular movement between the lots.
- I. The plat's text shall include the standard floodway language.
- J. The access controls have been platted in accordance with the CUP. The plat proposes two openings along 45th St. North, and one opening for each lot along Hillside. **The access controls have been approved. KDOT should comment on access control on 45th St. North.**
- K. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on this property.
- L. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed."
- M. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- N. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- O. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- P. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- R. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- V. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- W. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: Approve subject to staff recommendations.

MITCHELL moved, HENTZEN seconded the motion and it carried 10-0.

2-4. **SUB2005-44 – One-Step Final Plat – HOME BANK AND TRUST COMPANY ADDITION, located on the northwest corner of 13th Street North and Greenwich Road.**

NOTE: This is an unplatted site located within the City.

STAFF COMMENTS:

- A. City water services are available to serve the site. The applicant shall guarantee the extension of sanitary sewer to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan needs to be provided.**
- D. **Traffic Engineering** needs to comment on the access controls. **The access controls are approved. A cross-lot access agreement shall be provided.**
- E. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings. A Driveway Closure Certificate in lieu of a guarantee may be provided.
- F. The Access Management Regulations require an additional 25-ft x 25-ft corner clip at the intersection corner.
- G. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- H. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- I. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- J. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- K. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- L. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- M. Perimeter closure computations shall be submitted with the final plat tracing.
- N. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- O. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- P. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: Approve subject to staff recommendations.

MITCHELL moved, HENTZEN seconded the motion and it carried 10-0.

2-5. SUB2005-43 – One-Step Final Plat – PRAIRIE POINTE 2nd ADDITION, located north of 37th Street North and west of Maize Road.

NOTE: This is a replat of 13 lots in the Prairie Pointe Addition. A street stub to the north has been added.

STAFF COMMENTS:

- A. Petitions have been provided with Prairie Pointe Addition for sewer, water, drainage, paving and traffic improvements. **New petitions need to be submitted.**
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- D. Since this is a replat of a previous Addition involved with the ownership and maintenance of reserves for that Addition, but not being replatted by this Addition, the above covenants and/or other legal documents shall be provided which provides for this Addition to continue to share in the ownership and maintenance responsibilities of any such previously platted reserves.
- E. The Applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on at least one side of all through, non cul-de-sac streets.
- F. **GIS** has approved the street names.
- G. **City Fire Department** needs to comment on the configuration of the L-turnaround for Manchester. **The street configuration is approved.**
- H. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- M. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- P. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Q. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: Approve subject to staff recommendations.

MITCHELL moved, **HENTZEN** seconded the motion and it carried 10-0.

2-6. DED2005-14 – Dedication of Street Right-of-Way, for property located south of 47th Street North and on the east side of Woodlawn.

APPLICANT: Shawn Penner, Shamrock Development, LLC, 6432 E. 34th Street North, Wichita, KS 67226

AGENT/SURVEYOR: Russ Ewy, Baughman Company, 315 Ellis, Wichita, KS 67211

LEGAL DESCRIPTION: The west 10 feet of Lot 1, Linder Addition, Wichita, Sedgwick County, Kansas.

PURPOSE OF DEDICATION: This dedication is associated with a zoning case (ZON 2004-12), and is for 10 feet of additional street right-of-way along Woodlawn.

STAFF RECOMMENDATION: Accept the Dedication.

MOTION: Approve subject to staff recommendations.

MITCHELL moved, HENTZEN seconded the motion and it carried 10-0.

❖ **PUBLIC HEARINGS – VACATION ITEMS**

3-1. VAC2005-15 – Request to Vacate a Platted Front Setback.

APPLICANTS/OWNERS: Darren B Hise

AGENT: Davis Hart

LEGAL DESCRIPTION: 7-feet of the platted 50-foot front setback running parallel to the east lot line of Lot 7, Block 15, K-42 Estates Addition, Sedgwick County, Kansas

LOCATION: Generally located east of 167th Street West and north of 55th Street South, more specifically northwest of the Burlington Lane – 55th Street South intersection (BoCC District #3)

REASON FOR REQUEST: Rebuild

CURRENT ZONING: Site and all property in the area are zoned “RR” Rural Residential.

The applicants are requesting consideration to vacate 7-feet of the platted 50-foot front yard setback. The applicant proposes to remove an existing manufactured home and to rebuild on the site. There is an existing detached garage and a shed that the applicant proposes to leave standing. The location of these two structures and the applicant's desire to keep them prevents the applicant from moving the proposed house back out of the platted setback. The manufactured home that is to be removed had encroached into the platted setback. The K-42 Estates Addition was recorded with the Register of Deeds July 21, 1969.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval of the vacation of a portion of the platted 50-foot front yard setback, as described.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Derby Reporter, of notice of this vacation proceeding one time April 21, 2005 which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portions of the platted front yard setback and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted 50-foot front setback described in the petition should be approved with conditions:
- 1) Vacate 7-feet of the platted 50-foot front yard setback on Lot 7, Block 15, the K-42 Estates Addition, as recorded with Wichita, Sedgwick County, Kansas.
 - 2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
 - 3) All improvements shall be according to County Standards.
 - 4) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

- (1) Vacate 7-feet of the platted 50-foot front yard setback on Lot 7, Block 15, the K-42 Estates Addition, as recorded with Wichita, Sedgwick County, Kansas.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
- (3) All improvements shall be according to County Standards, including any driveways from private property onto public ROW.
- (4) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: Approve subject to staff recommendations.

MITCHELL moved, **HENTZEN** seconded the motion and it carried 10-0.

3-2. VAC2005-16 – Request to Vacate a Utility Easement Dedicated by Separate Instrument.

OWNER/APPLICANT: MC Properties

AGENT: Savoy Company, PA , c/o Mark Savoy

LEGAL DESCRIPTION: All of the 20-foot utility easement, except for the east 20-feet, dedicated by separate instrument, Film 274, Pages 813 & 814, that runs parallel to the common lot line of Lots 40 & 41, the Freeman's Addition, Wichita, Sedgwick County, Kansas.

LOCATION: Generally located south of Harry Street and west of Southwest Boulevard, more specifically on the southwest corner of the Esthner Avenue – Knight Avenue intersection.

REASON FOR REQUEST: Expansion of existing building

CURRENT ZONING: Subject property and all abutting and adjacent properties are zoned "LI" Limited Industrial.

The applicant is requesting consideration for the vacation of a portion of a 20-foot utility easement dedicated by separate instrument as described. There is a sewer line in the portion of the easement the applicant wants to vacate. The applicant has provided an Engineer's Certificate of Completion in regards to the sewer line located in the easement having been abandoned per City Standards. There are no water lines in the easement. The Freeman Addition appears to have been recorded with the Register of Deeds in 1910.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the utility easement dedicated by separate instrument as described in the legal description with the following conditions.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time April 21, 2005, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described portion of the utility easement dedicated by separate instrument and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the portion of the utility easement dedicated by separate instrument described in the petition should be approved with conditions:

- 1) Vacate only that portion of the easement dedicated by separate instrument as described in the legal description.
- 2) Public Works/Water & Sewer must approve the sanitary sewer abandonment project.
- 3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant. If needed provide the public and franchised utilities with all required replacement easements.
- 4) Retain the easement dedicated by separate instrument until all utilities in the easement have been relocated/abandoned and approved by the public and franchised utilities

- 5) All improvements shall be according to City Standards.
- 6) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate only that portion of the easement dedicated by separate instrument as described in the legal description.
- (2) Public Works/Water & Sewer must approve the sanitary sewer abandonment project.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant. If needed provide the public and franchised utilities with all required replacement easements.
- (4) Retain the easement dedicated by separate instrument until all utilities in the easement have been relocated/abandoned and approved by the public and franchised utilities.
- (5) All improvements shall be according to City Standards.
- (6) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: Approve subject to staff recommendations.

MITCHELL moved, **HENTZEN** seconded the motion and it carried 10-0.

3-3. VAC2005-17 – Request to Vacate Platted Access Control.

<u>APPLICANTS/OWNERS:</u>	Rita Neville
<u>AGENT:</u>	Baughman Company PA, c/o Russ Ewy
<u>LEGAL DESCRIPTION:</u>	Generally described as the platted access control on Lots 3& 1, Tyler Acres 5 th Addition, Wichita, Sedgwick County, Kansas, running parallel to Central Avenue
<u>LOCATION:</u>	Generally located approximately 240 - 300-feet east of Tyler Road, on the north side of Central Avenue (WCC District #V)
<u>REASON FOR REQUEST:</u>	To relocate existing drive
<u>CURRENT ZONING:</u>	The site and all abutting and adjacent properties are zoned "LC" Limited Commercial. The site is part of CUP DP-11.

The applicant has applied for the vacation of the complete access control along the site's east 240 - 300-feet of its Central Avenue frontage. The request will remove the eastern drive located on the site and realign it approximately 25 – 30-feet east of its current location. The subject site is part of CUP DP-11, which has integrated access, circulation and parking, including three existing/permitted platted access/drives onto Central Avenue from the site. At this location Central Avenue is a four-lane arterial with a turn lanes on its north and south sides and a center turn lane. South of the site, across Central Avenue, are two existing drives, which line up approximately with the site's existing drives and the proposed realigned drive. There are no water or sewer lines located in this side of the Central Avenue right-of-way (ROW). Comments from franchised utilities have not been received and are needed to determine if they have utilities in the ROW. The Tyler Acres 5th Addition was recorded with the Register of Deeds September 2, 1983.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate a portion of the platted access control, per the approval of the Traffic Engineer, with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time March 24, 2005 which was at least 20 days prior to this public hearing.

2. That no private rights will be injured or endangered by the vacation of the above-described portion of platted complete access control and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of a portion of the platted complete access control described in the petition should be approved with conditions:

- 1) Vacate that portion of platted access control along the site's Central Avenue frontage, as approved by the Traffic Engineer to realign the eastern drive.
- 2) Provide Staff with an e-mail word document of the metes and bounds description of the location of the new drive and the reestablished access control over the old drive's location.
- 3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
- 4) All improvements shall be according to City Standards, including any driveways from private property onto public ROW.
- 5) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions;

- (1) Vacate that portion of platted access control along the site's Webb Road frontage, as approved by the Traffic Engineer to allow one right-in right-out drive onto Webb Road.
- (2) Provide Staff with a metes and bounds description of the location of the new drive and the reestablished access control over the old drive's location.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
- (4) All improvements shall be according to City Standards, including any driveways from private property onto public ROW.
- (5) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: Approve subject to staff recommendations.

MITCHELL moved, **HENTZEN** seconded the motion and it carried 10-0.

3-4. VAC2005-18 – Request to Vacate a Platted Utility Easement.

OWNER/APPLICANT: Rob Ramseyer

AGENT: Baughman Company, PA , c/o Phil Meyer

LEGAL DESCRIPTION: The east 15-foot utility easement, except the north 20-feet, lying in Reserve "A", together with the 15-foot utility easement, except the south 20-feet, lying in Lot 29, Block A, all in Reed's Cove 3rd Addition, Wichita, Sedgwick County, Kansas.

LOCATION: Generally located south of 21st Street North, midway between 127th Street East and 143rd Street East, more specifically on the west corner of the 21st Street North – Clear Creek Street intersection (WCC District #II)

REASON FOR REQUEST: To replace with a private landscape and wall easement

CURRENT ZONING: Subject property and all abutting and adjacent properties are zoned "SF-5"
Single-family Residential

The applicant is requesting consideration to vacate the described portions of the platted utility easement. There are no franchised utilities, sewer or water lines in the described portion of the utility easement. The Reed's Cove 3rd Addition was recorded with the Register of Deeds May 26, 2004.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the platted utility easement as described in the legal description with the following conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time April 21, 2005 which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of platted utility easement and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of a portion of the platted utility easement described in the petition should be approved with conditions:
1. Vacate only that portion of the utility easement as described in the legal description.
 2. Public Works/Water & Sewer must approve the recorded utility easement.
 3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
 4. If needed provide the franchised utilities with all required replacement easements. If needed, retain the platted utility easement until all utilities in the easement have been relocated/abandoned and approved by the public and franchised utilities
 5. All improvements shall be according to City Standards.
 6. [Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.](#)

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions;

- (1) Vacate only that portion of the utility easement as described in the legal description.
- (2) Public Works/Water & Sewer must approve the recorded utility easement.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (4) If needed provide the franchised utilities with all required replacement easements. If needed, retain the platted utility easement until all utilities in the easement have been relocated/abandoned and approved by the public and franchised utilities
- (5) All improvements shall be according to City Standards.
- (6) [Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.](#)

MOTION: Approve subject to staff recommendations.

MITCHELL moved, **HENTZEN** seconded the motion and it carried 10-0.

❖ **PUBLIC HEARINGS – ZONING ITEMS**

4. **Case No.: CON2005-14** – Bradley & Elizabeth Anderson / Orville & Lola Anderson Request Sedgwick County Conditional Use for an accessory apartment on property zoned “RR” Rural Residential on property described as;

A tract in the S/2 of the of the SE/4 of Section 23, Township 26 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, described as commencing at the Southeast corner of said SE/4; thence N 90 degrees W on an assumed bearing,

462.45 feet to the point of beginning; thence continuing N 90 degrees W, 744.71 feet; thence N 1 degree 47'04" E, 453.21 feet; thence N 20 degrees 41'59" E, 80.59 feet; thence N 36 degrees 55'55" E, 100.68 feet; thence N 54 degrees 35'42" E, 134.17 feet; thence S 82 degrees 14'24" E, 104.09 feet; thence S 48 degrees 24'02" E, 196.13 feet; thence S 32 degrees 02'25" E, 255.09 feet; thence S 24 degrees 17'00" E, 357.75 feet to the point of beginning. Generally located Approximately 1/4 mile west of 135th Street West on the north side of 45th Street North.

BACKGROUND: The applicants are requesting a "Conditional Use" to allow an accessory apartment on an 8.36-acre tract, located at 13820 West 45th Street North. The applicants' parents will live in the accessory apartment. The subject site is zoned "RR" Rural Residential. Because the proposed additional structure will contain a kitchen and sleeping quarters, it is classified as dwelling unit and thus requires "Conditional Use" approval for an accessory apartment. The site is in Sedgwick County and within the City of Colwich's area of zoning influence. The applicants have provided a site plan.

The site plan submitted by the applicant shows the apartment sitting behind the primary residence on the north side of the site. The site plan also shows the primary residence, two barns, grain bins and the driveways. The primary structure was built in 1927, is a two-story frame house with lap siding and is approximately 1,859-square feet in size. The proposed accessory apartment is shown as approximately 1,680-square feet in size. The accessory apartment shares the same drive onto 45th Street North as the primary residence. The site plan shows distances between structures and the size of some of the structures.

The subject site is located in a rural portion of Sedgwick County, with scattered farmsteads and agricultural fields. There is a mature hedge of trees around the subject site. There are agricultural fields located on all sides of the subject site, with the nearest neighbor located over a quarter of a mile to the southeast. There are a series of communication towers west of the site. The site is located approximately 1 1/2 -miles southeast of the City of Colwich.

As per the Unified Zoning Code, the "Conditional Use" requirements for accessory apartments stipulate the following:

- (a) A maximum of one accessory apartment may be allowed on the same lot as a single-family dwelling;
- (b) The appearance of an accessory apartment shall be compatible with the main dwelling and with the character of the neighborhood;
- (c) The accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling, including that it shall not be subdivided or sold as a condominium.
- (d) The water and sewer service provided to the accessory structure shall not be provided as separate service from the main dwelling.

CASE HISTORY: The subject site is an unplatted tract. The Colwich Planning Commission considered this case at their April 26, 2005 meeting and recommended approval with Staff's recommended conditions.

ADJACENT ZONING AND LAND USE:

NORTH: "RR" Rural Residential	Agricultural fields
SOUTH: "RR" Rural Residential	Agricultural fields
EAST: "RR" Rural Residential	Agricultural fields
WEST: "RR" Rural Residential	Agricultural fields

PUBLIC SERVICES: 45th Street North and 135th Street West are both unimproved Union Township roads. The 2030 Transportation Plan projects no change in 135th Street West's status, but shows 45th Street North to become a two-lane arterial. The site is outside any rural water districts and is served by a well. The site has no access to public sewer and is served by a septic system.

CONFORMANCE TO PLANS/POLICIES: The 2001 Sedgwick County Development Guide Land Use Guide of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* designates this area as "Rural". The Rural category is intended to accommodate agricultural uses, rural based uses that are no more offensive than normal agricultural uses, and large lot residential subdivisions with provisions for future water and sewer services. The policies of the Unified Zoning Code allow one accessory apartment to be associated with a principle dwelling as a "Conditional Use" if the proposed use is compatible with the principle dwelling, is in character with the surrounding residential development, is accessory to the main structure, remains in a single ownership, and obtains water and sewer service from the main dwelling hook-up.

RECOMMENDATION: Based upon information available prior to the public hearing, Staff recommends that the request be APPROVED subject to the following conditions being completed within a year:

1. The accessory apartment shall be subject to all requirements of Section III-D.6.a of the Unified Zoning Code; including appearance of the accessory apartment shall be compatible with the primary residence.
2. The applicant shall obtain all applicable permits, including but not limited to building, health, and zoning.
3. Per the recommendation of the Sedgwick County Department of Code Enforcement, Water Quality Specialist, the site's septic tank will have a pump tank with an alarm to get the effluent to the existing lateral field.
4. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VII hereof, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area's character is rural with agricultural fields and scattered farmsteads. The site sits over the Equus Beds.

2. The suitability of the subject property for the uses to which it has been restricted: Accessory apartments are allowed as a "Conditional Use" in "RR" zoning provided the applicant and the site meet the specified criteria. The application and the site appear to meet these criteria.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental effect should be minimized by the conditions for accessory apartments by the UZC and the conditional use.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Unified Zoning Code makes specific provision for accessory apartments in "RR" zoning. This application appears to comply with all the provisions outlined in the UZC for accessory apartments.
5. Impact of the proposed development on community facilities: The applicants' request should have a minimal impact on community facilities; there is no public water or sewer available at this time. The site is outside any rural water district.

GAROFALO Is this a mobile home?

LONGNECKER It is a manufactured home.

GAROFALO I did notice in the conditions of approval that there is not a time frame for removal of this home once it is not needed, don't we usually have that conditions in there?

LONGNECKER No, that is not typical.

MCKAY We have discussed it in the past but we have never put it in as a standard condition because there is no really true timetable. We had one down on south MacArthur Road where they put the condition in because it was temporarily because it was for a sick parent, and they volunteered to remove it after the need was no longer there.

MILLER The applications that do have the time limit are the medical hardships, and when the need is no longer there then they agree to remove it. This is not a medical hardship in my understanding.

LONGNECKER That is correct, this is not a medical hardship.

MOTION: Approve subject to staff recommendations.

GAROFALO moved, **MCKAY** seconded the motion and it carried 10-0.

5. **Case No.: ZON2005-16** – Evelyn Nicholson (applicant); Baughman Company, PA, c/o Terry Smythe (agent) Request Sedgwick County Zone change from "RR" Rural Residential to "LI" Limited Industrial on property described as;

The East Half of the Southeast Quarter of Section 16, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas except the North 70 acres thereof and except parts taken for road on the East and the South. Generally located On the north side of 53rd Street North, west of Ridge Road.

BACKGROUND: The applicant requests "LI" Limited Industrial zoning on an 8.1-acre unplatted site, currently zoned "RR" Rural Residential, for speculative future industrial use. The application area is north of 53rd Street North and west of Ridge Road, and is developed with a single-family residence. This request for LI zoning would create a non-conforming use of the existing residence, as residential uses are not permitted in LI zoning. The site is within the Maize Area of Influence, therefore this request will go before the Maize Planning Commission.

North of the application area is an RR zoned large lot used for a single-family house (approximately 100 feet north of the application area) along with a large pond. The site had Conditional Use CU343 for sand extraction, which was granted in 1991, and expired in 1996. South of the application area, across 53rd Street North are RR zoned single-family residences and a farmstead. East of the application area is an RR zoned farmstead at the northeast corner of Ridge and 53rd North, LC zoned vacant land southeast of the corner, and SF-20 zoned single-family residences surrounding the LC corner. Immediately west of the application area is an LC zoned vehicle repair shop, rezoned in 2004 with a Protective Overlay that limits uses to those in the GO zone and limited vehicle repair, requires hazardous spill protection, and requires screening. Further west and northwest of the site are LI and GO zoned properties with a City of Maize Transportation facility, and an engineering industrial use.

CASE HISTORY: The property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: "RR"	Single-family residential
SOUTH: "RR"	Single-family residential, farmstead
EAST: "RR", "LC", "SF-20"	Single-family residential, farmstead, vacant
WEST: "LC"	Vehicle repair, transportation facility, engineering industrial use

PUBLIC SERVICES: Both Ridge Road and 53rd Street North are paved arterials at this location; both have a 60-foot half-width right of way (ROW) at the site that tapers to 75 feet at the intersection. Current traffic counts on this portion of 53rd Street North are 3,203

vehicles per day, and 3,906 on this portion of Ridge. The 2030 Transportation Plan designates that both of these streets remain two-lane arterials, and no future projects are planned for this area.

Municipal water and sanitary sewer service are not available to the site; therefore, on-site water and sanitary sewer service would need to be provided. The property is located within the Equus Beds Groundwater Management District in area where ground water is likely to be within 10 feet of the ground surface.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "rural" development, and not within the 2030 Urban Service Area. Rural areas consist of land outside the 30 year Wichita urban service area and small city growth areas. The Rural category is intended to accommodate agricultural uses, rural based uses that are no more offensive than normal agricultural uses, and large lot residential subdivisions with provisions for future water and sewer services.

The Industrial Locational Guidelines of the Comprehensive Plan recommend that industrial sites be located in close proximity to support services and be provided good access to major arterials, city truck routes, belt highways, utility truck lines, rail spurs, airports and as extensions of existing uses. The locational guidelines go on to recommend that industrial uses should be generally located away from existing or planned residential areas, and sited so as not to generate industrial traffic through less intensive land use areas.

The Goals, Objectives, and Strategies of the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan also provide guidance regarding land use. The Land Use-Industrial section contains a strategy (IV.A2) that states, "in those portions of rural unincorporated Sedgwick County outside the projected urban growth area, allow industrial development only when it is agriculturally oriented, dependent upon a natural resource, or, as part of an appropriate expansion of an existing industrial area." The requested zone change for unspecified industrial development is not consistent with the Land Use Guide or the Goals, Objectives, and Strategies of the Comprehensive Plan. The Amended Comprehensive Development Plan 1980-2000 for the City of Maize does not address the subject property. The City of Maize currently is making major revisions to its comprehensive plan, and those revisions may address the subject property in the future.

The Unified Zoning Code (UZC) would require a 25-foot compatibility setback between non-residential and residential development, and would require screening between non-residential and residential development. The Sedgwick County Access Management Policy would limit the number of access points and their spacing along 53rd Street North and Ridge. And, the County Sign Code would limit signage for development at this site.

RECOMMENDATION: The proposed change is in not in conformance with the MAPC Comprehensive Plan and the area is not included in the adopted Maize Comprehensive Plan. The proposed zone change would create a non-conforming use of the existing single-family home. The unspecified future industrial use proposed for this site could be incompatible with the existing single-family home 100 feet north of this site. The lack of public infrastructure at the site is problematic for industrial development. Also, the lack of public water and sewer to this site are of particular concern because of the site location within the Equus Beds Groundwater Management District. An unspecified industrial use at this location could involve hazardous materials, and any size of potential spill into the groundwater could result in contamination.

The LC zoning west of the site was approved in 2004, and rectified an unpermitted use. This LC zoning is under a restrictive protective overlay. The LI zoning also to the west houses primarily storage uses, and was permitted with GO zoning fronting 53rd Street North. This industrial zoning was approved in 1984 to rectify an existing non-conforming use at that time.

As an arterial intersection site, this property could be appropriate for future non-residential use. The Comprehensive Plan states that commercial uses in rural areas should be agriculturally oriented or provide necessary convenience services to residents in the immediate area. Any future use of this site will require consideration of utilities and contamination protection for the Equus Beds. Because this request is speculative for industrial use, staff does not find it feasible to recommend a protective overlay, which would need to be tailored to a specific use.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be DENIED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: This proposal is not consistent in terms of zoning, uses, or character with large lot suburban residential development to the north, south and east. Most surrounding land is zoned "RR" Rural Residential and is used for agriculture or large lot residential uses. The area abutting to the west is zoned "LI" Limited Industrial and "LC" Limited Commercial, and is used for an office and the Maize school bus storage facility, and a limited vehicle repair shop with a protective overlay.
2. The suitability of the subject property for the uses to which it has been restricted: The property has been developed with a single-family use as currently zoned. The site is suitable for Rural Residential use, as it is currently zoned. The requested LI zoning would create a non-conforming use of the existing home, as residences are not permitted in industrial zoning.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: LI zoning at this location could allow uses which would be incompatible with the single-family home 100 feet north of the site, and would be incompatible with the residences south and east of the site, across 53rd North and Ridge. Negative effects on these residences from uses permitted in the LI zone could include large truck traffic, manufacturing noise, odors, vibrations, industrial buildings, outdoor storage, and dust. Uses in the LI zone could be significantly more intense than the existing bus storage and limited vehicle repair to the west of this site. Any possible contamination of groundwater at this location would be dangerous and damaging to all surrounding landowners, and the greater community.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "rural" development, and not within the 2030 Urban Service Area, which is not in conformance with requested zoning. The Industrial Locational Guidelines of the Comprehensive Plan recommend access to support services, and separation from residential use, which this site does not have. Likewise, the request is not in conformance with the strategy guidelines of the Comprehensive Plan. The City of Maize Comprehensive Plan does not address this site.
5. Impact of the proposed development on community facilities: The requested zone change would introduce an unknown industrial land use to an area lacking appropriate community facilities. Fire and crime protection services cannot be adequately provided to an industrial use at this remote location. On-site water and sanitary sewer service for an industrial use at this location would lead to a significant potential for groundwater pollution as the site is located within the Equus Beds Groundwater Management District, in a area where ground water is likely to be within 10 feet of the ground surface.

BARFIELD What was the vote of the Maize Planning Commission?

MCNEELY They voted 6-0 to deny the request.

GAROFALO The bus barn is to the west of this?

MCNEELY Yes.

GAROFALO You are referencing, in your findings on page five, to the Comprehensive Plan about the 1999 update, what about what we approved last week? Is it the same?

MCNEELY Yes. Likewise what I believe was presented to MAPC updated the small city growth areas. Maize has not updated their Comprehensive Plan but they have updated their small city growth area in conjunction with our office, and their small city growth still does not reach to this intersection.

DUNLAP Maize has not put together a plan for this area but they object? Is that a true statement?

MCNEELY Yes.

DUNLAP They don't know what they are going to do but they object to this?

MCNEELY This is in their area of influence but they did not see this as an appropriate location for industrial development.

DUNLAP You have referred several times to spill protection, and the ground water contamination, what protection do we have on the bus barn and the meter engineers for spill protection?

MCNEELY There is not a Protective Overlay on them for spill protection.

DUNLAP Is there physical spill protection there?

MCNEELY Whatever their current business license under the County requires.

DUNLAP No, is the answer.

MARNELL Early in your presentation of the staff report you made a comment that the County Zoning Officer said that this would be a enforcement problem. I don't know how they can see into the future when this is unspecified proposed use anyway.

MCNEELY We generally check with Glen Wiltse, the Zoning Administrator with the County, and ensure that we get their input as staff, and get their recommendation as well. Being that the last zone change that was approved in this area had a protective overlay, because of concerns, because of this location, I would just leave it that Mr. Wiltse was not supportive of this type of industrial development at this location.

MARNELL I don't think that is what you said earlier. I am curious how they can see in advance that this is going to be an enforcement problem.

MCNEELY That is their statement to us.

MARNELL So he objects to the site?

MCNEELY Yes.

MITCHELL What would be the setback from a industrial building from the proposed right-of-way line on 53rd Street be?

KNEBEL It would depend on how they platted it as to what the front of the lot was as to whether it was the front lot or street side.

MILLER There is a minimum of 100 feet from the centerline of arterial streets.

MCNEELY This has a 60 foot right-of-way, so at this point it would be 40 foot along 53rd Street.

MITCHELL What would be the setback from a residential tract north of here?

MCNEELY At this point the compatibility setback would kick in that would require a 25 foot minimum.

MITCHELL So, 40-25 would be all?

MCNEELY Yes.

MCKAY What sewer would this piece of ground be using? Wichita City Sewer or Maize City Sewer?

SCHLEGEL The City of Wichita's Sewer service extends just to the south side of 53rd Street, and they don't show it going to the north side but I suppose if they were to petition to the City of Wichita for sewer service they could get it. Maize does not anticipate going this far east with their sewer service although their sewage treatment plant would be closer.

TERRY SMYTHE, BAUGHMAN COMPANY There is one house that the owner lives on that property, and he understands that he is asking for limited industrial zoning. He understands that he will be a non-conforming use until this site gets developed. He has no problem with that. He knows that as a non-conforming use that if the building gets burned out or torn down that he will have certain rights that he can't do and expansion right. He has no intention to expand his single-family house. This is a left over piece of property from the old sandpit operation. The owner to the north had the opportunity to buy this small piece of ground and use it as part of that sandpit, and they declined to do this. So the current owner has what I say is a small sliver if property left in which he has to try and develop the property.

It is not conducive to single-family, frankly any kind of residential area out there. There are a number of industrial activities going on out here. You look at the aerial photos of the sand extraction operation I have provided, that there is a large amount of sandpit operations out here today. This is an industrial area handled by Conditional Uses. Once the sand is extracted you only have redevelopment plans that they could go to something else. As long as that industry and that natural resource is still up there that area is still going to be known for sand extraction. There are also a lot of farming operations going on in that area that we think helps this piece of property lends itself to some sort of services.

We see this piece of property as an opportunity to provide services to the industries that are out there. Yes, it could be large buildings, it could be truck and sales parts, it could be car washes, truck and sales parts, it could be propane sales. You need to remember this is a Sedgwick County zoning case, and we have applied for this in the County. The City of Wichita is not out there today. The City of Maize is not quite there today. They are both within about a mile. I have been told that the sanitary sewer line for Maize is going to be about a mile to the west by the end of this year. This is a piece of property that is still in the County. Nobody has claimed it yet, and nobody has run for it yet with sewer or water so we have to consider this to be a county case. Now, what is acceptable for services in the county, in my opinion, all of the Sedgwick County Health systems in the past have been approved and accepted by this body, and the BOCC there are accepted health systems for sanitary sewer and water. There are health protections for spills, KDHE requirements, setback requirement, etc. I think there are enough requirements on this piece of property today to protect it and the development around it. To our west it is zoned "LI" Limited Industrial, they have no spill protection or requirements, and I think from my standpoint that doesn't mean that it is bad, that means the existing systems that are out there are going to take care of that. Can we totally prevent any type of accident from happening? No. Can the sandpit and operations can that prevent any potential accidents in the water table? Of course not. Much of the same kind of uses which I am talking about on this piece of property I had on my property growing up. Large buildings, I worked on machinery, and I provided services to the other farmer and ranchers. In my opinion this area is located and it is adjacent to tag and natural resources. If you look at the industrial guidelines, you will see that this does, and can in the future, if zoned this district, provide services to the agriculture community and the industrial areas that are out there today. Once the bridge over 53rd got built the traffic has increased immensely out there, and this is going to be a major east/west thoroughfare, and most of the traffic is trucks because of the sand extraction industry that is all around this property.

The letter you received today is from two owners that are roughly a ¼-mile to our west, and the bus barn is larger than what we are proposing on this site. We don't have a large piece of property. We have 3-400 feet in depth. So the scale of our Limited Industrial uses is not going to accommodate Boeing or Cessna or all the other large industrial visions that we have when we talk about industrial zoning. These are going to be small little operators, the small services for uses out in this area. The guidelines in the Comprehensive Plan talk about large industrial users, and where they should be located, and you have stuff like along railroad, airports and built highways, well when I look at that kind of stuff I think very large industrial users, like Boeing. Most of the stuff you see in the county is for small users they don't need to be on a railroad spur, or on a belt highway, or to the airport. They need to supply services to the general vicinity in which they are in.

The goals, objectives and strategies of the Comprehensive Plan, encourages small industrial areas in rural areas where the use is agriculture oriented and dependent on natural resources and expansion of existing industrial areas, and we do all three of those. We intend to utilize the sanitation systems which the County approves and if and when any city can supply those services we will connect to those systems, whether it is Maize or the City of Wichita.

MCKAY Why was this particular Light Industrial zoning picked?

SMYTHE Given the uses that are around there today, the request for sites that this property owner has had for similar kind of uses, and the main thing is that we assumed the City of Maize would get to this first before the City of Wichita Did. There is an industrial zoning district in the City of Maize that we feel that our request meets those requirements within their Code so we have applied for that to try and met that requirement for Maize.

MCKAY You are aware that because of the ability to dig sandpits and make beautiful lakes for housing subdivisions in this area that this is one of the fastest growing areas in the City of Wichita. You disagree with that?

SMYTHE I agree with that.

MCKAY You keep talking about long-range for the future, and at the rate that it is growing I would think that industrial is not appropriate based on all of the rest of the industrial that is there at this particular corner. I would see more like a commercial corner or something of that affect for services like you are talking about because 10 years ago none of this was out there. The industrial park was there because that used to be Waste Management but as fast as this area is growing, and all the way from there south on Ridge Road is clean out of houses, and the development community is buying them up because of the ability to put in sandpits and put housing subdivisions around them. In 10 years I don't feel that limited industrial will be the proper zoning for this area.

SMYTHE When we first looked at potential uses on this property and the request for this property, we looked at the zoning code. We looked at General Commercial and Limited Industrial, and because houses did not seem to fit in this area we knew that Light Industrial and General Commercial allowed a variety of uses including many of those uses that occur in Light Commercial zoning so this would allow for something to happen today as well as a conversion to say more traditional zoning districts in the future. The industrial zoning district gives you a large variety of uses that can occur presently and in the future.

DUNLAP I kind of agree with what Commissioner McKay is saying if the consideration had been given to having commercial on the east and industrial end to match up with the industrial, which would get you corner lots for light commercial. I am not suggesting that I want to design your plat. I am just asking did you think about that benefit?

SMYTHE Yes we thought about applying for a multiple zoning request, and to be honest with you we asked for General Commercial on the corner because we have some known users that want the large Butler type buildings for services, and letting the rest go to Limited Industrial. But when we started looking at the code we felt that most of those uses were rolled up to the same kind of request. I think we might want to consider it. Dale Miller and I did talk about this when he kept telling me that staff was going to deny this, that we talked about this and the applicant said we could take General Commercial with a Protective Overall to eliminate some uses. But I don't want to complicate that because the City of Maize heard our request for Limited Industrial.

DUNLAP Is there anyone out in the audience that would like to speak on this item? Seeing none we will reserve comments to the Planning Commission

MCKAY Can we recommend a down zoning from what they are requesting as a Planning Commission?

SCHLEGEL Yes, I think that would be acceptable because you can take an action to zone it for a lesser classification than what is being requested.

DUNLAP If that happens does it have to go back to Maize for their consideration?

SCHLEGEL No, they have already reacted to the request and it would not go back to Maize and be forwarded to the BOCC.

MOTION: That the applicant get with staff and do some redesign of the area and defer the request and come back to the MAPC in two weeks with an alternate zoning rather than have us turn down light industrial and come back with a plan.

MCKAY moved, **MITCHELL** seconded.

DUNLAP I would like to comment and say that we would try to help, and I don't think the MAPC wants to deny this and this would be the best alternate method.

MOTION carried 10-0.

6. **Case No.: ZON2005-15** – Wichita Concrete Pipe, Inc. c/o Brad Werth (owner/applicant); Baughman Company c/o Phil Meyer (agent) Request Zone change from "SF-5" Single-family Residential to "LI" Limited Industrial with a protective overlay to restrict uses and provide additional screening and buffering on property described as;

A tract of land lying in the Northeast Quarter of Section 32, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as beginning at the Northeast corner of the Northwest Quarter of said Northeast Quarter; thence South to the Southeast corner of the Northwest Quarter of said Northeast Quarter; thence West along said South line to center of Old Chisholm Creek (now improved drainage channel); thence Northerly along the center of Old Chisholm Creek (now improved drainage channel) to a point on the North line of said Northeast Quarter; thence East to beginning, except 0.31 acres taken through Floodway Condemnation Case No. 41035 and except for road right-of-way. Generally located South of 37th Street North and west of Broadway

BACKGROUND: The applicant requests a zone change from "SF-5" Single-Family Residential to "LI" Limited Industrial with a Protective Overlay District to limit permitted uses and provide screening/buffering on a 10.1 acre unplatted tract located south of 37th Street North and west of Broadway. As stated in the attached letter, the applicant proposes that the subject property be limited to the following uses: outdoor storage of concrete products and materials related to the manufacturing of concrete products, and accessory structures and uses related to the storage and/or maintenance of stored materials and products. The applicant also proposes that an eight-foot high concrete/masonry wall be provided along the south and west property lines and that a 50-foot deep landscape buffer with trees planted every twenty feet (including existing trees) be provided along the south and west property lines. The applicant also proposes to permit a bike path to be located though the western portion of the landscape buffer. The applicant proposes to limit the height of stored materials and to provide a maintenance program for limiting blowing dust. Similar conditions also are proposed through a voluntarily-offered restrictive covenant for the applicant's industrially-zoned property that is located immediately east of the subject property.

The surrounding area is characterized by a mixture of industrial and residential uses, with the industrial uses primarily located to the east. Most of the properties to the north, south, and west are zoned "SF-5" Single-Family Residential and are developed with single family residences, but are separated from the subject property by drainage ditches on the north and west. Most of the properties to the east are zoned "LI" Limited Industrial and are developed with various industrial uses.

Since adjacent properties have residential zoning, the Unified Zoning Code (UZC) requires screening along the south and west property lines. The proposed eight-foot high concrete/masonry wall meets the UZC screening requirement. The Landscape Ordinance requires landscape buffering along the south and west property lines and a landscaped street yard along the north property line. The proposed 50-foot deep landscape buffer with trees every 20 feet far exceeds the buffering requirements of the Landscape Ordinance.

CASE HISTORY: According to aerial photographs, the applicant began using the southern half of the subject property for storage of concrete products and materials in violation of the Unified Zoning Code sometime between 1997 and 2000. Illegal use of the subject property for storage of concrete products and materials continued through 2002, at which time the applicant submitted, but subsequently withdrew, a zone change request (ZON2002-00072) for "LI" Limited Industrial. Illegal use of the subject property for storage of concrete products and materials ceased in 2003. In 2004, the applicant again requested "LI" Limited Industrial zoning (ZON2004-00006), this with a Protective Overlay District with similar, but less restrictive, conditions than currently proposed. The request in 2004 was recommended for approval by the District Advisory Board and Planning Commission but was denied by the City Council.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5" Big Ditch, single-family residences
SOUTH: "SF-5" Single-family residences
EAST: "LI" Various industrial uses
WEST: "SF-5" Single-family residences

PUBLIC SERVICES: The subject property has frontage along 37th Street North, a two-lane arterial street with current traffic volumes of approximately 3,900 vehicles per day. The 2030 Transportation Plan estimates that traffic volumes on 37th Street North will increase to approximately 11,000 vehicles per day and recommends that 37th Street North remain a two-lane arterial street. The Institute of Transportation Engineers manual does not include the applicant's outdoor storage use in order to determine the number of trips generated by the use in the peak hour; therefore, the applicant will need to work with the Traffic Engineer prior to platting to determine if a traffic impact study needs to be completed for the subject property. Public water and sewer service are available to be extended to the subject property, but likely will not be needed for the proposed use. The applicant will need to guarantee future extension of water and sewer service through the platting process.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development; however, the Planning Commission has an informal policy of supporting business expansions onto abutting property rather than requiring relocation. One of the Industrial Locational Guidelines of the Comprehensive Plan recommends that industrial uses be located in close proximity to support services such as major arterials, truck routes, highways, utility trunk lines, rail spurs, and airports, and the subject property meets this Locational Guideline.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following provisions of a Protective Overlay District:

1. The subject property shall be limited to the following uses: (a) Outdoor storage of concrete products and materials related to the manufacturing of concrete products; and (b) Accessory structures and uses related to the storage and/or maintenance of stored materials and products. This condition specifically prohibits the use of the subject property for the following uses: Asphalt or Concrete Plant, Manufacturing, Mining or Quarrying, and/or Rock Crushing.
2. A concrete/masonry wall at least eight feet in height shall be constructed parallel to the south and west property lines of the subject property. Said wall shall be set back a minimum distance of 50 feet from the west property line and from the north right-of-way line of 35th Street North so that the required landscape buffer can be planted between the wall and the property lines.
3. There shall be a 50-foot landscape buffer maintained along the west line of the subject property and in an area from the north right-of-way line of 35th Street North in conjunction with the solid screening wall. This buffer shall provide the equivalent of, at minimum, one tree per 20 feet. The existing tree rows may be used to meet the condition of one tree per 20 feet if the existing trees are located on the subject property. Where there are gaps, a double staggered row of a mixture of evergreen and deciduous trees shall be installed with one tree per 40 feet in each row with the planting size of the trees meeting the requirements of the landscape ordinance.
4. At the time of platting the applicant shall dedicate a 50-foot wide bike path easement along the west line of the subject property.
5. A site/landscaping plan for the screening wall and landscape buffer shall be submitted for approval by the Planning Director within 60 days of approval of the zone change request. The subject property shall be developed in general conformance with site/landscaping plan, and all improvements shown on the plan shall be completed prior to use of the subject property for the storage of concrete products.
6. The height of stored concrete products shall be limited to 10 feet within 100 feet of the wall and 15 feet elsewhere on the property.

7. The existing fence, trash, and debris along the south and west property lines shall be removed prior to use of the subject property for the storage of concrete products.
8. Upon development of subject property any blowing dust shall be minimized by routinely spraying water on unpaved surfaces.
9. No off-site or portable signs shall be permitted.
10. At the time of platting the applicant shall submit a No Protest Agreement for the future paving of 35th Street North.
11. The subject property shall be platted within one year but prior to use of the subject property for storage of concrete products. The plat shall include an approved drainage plan that prevents the run-off of any concrete products or materials into the adjacent creek on the west.
12. Within 60 days of approval of the zone change request, a voluntarily-offered restrictive covenant shall be submitted that places requirements A-G as stated in the letter from the applicant's agent dated April 4, 2005 and revised April 14, 2005 on the applicant's existing property to the east.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by a mixture of industrial and residential uses with the industrial uses primarily located to the east. Most of the properties to the east are zoned "LI" Limited Industrial. Given the separation from residential properties to the north and west by drainage ditches and the proposed screening and buffering, the proposed "LI" Limited Industrial zoning is compatible with the zoning, uses, and character of the neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "SF-5" Single-Family Residential, and could be developed with residential uses; however, the subject property is a logical location for the expansion of the existing industrial business on the abutting property to the east.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects on residentially-zoned properties in the area should be minimized by the proposed screening and buffering, which should limit noise, lighting, and other activity from adversely impacting these properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development; however, the Planning Commission has an informal policy of supporting business expansions onto abutting property rather than requiring relocation. One of the Industrial Locational Guidelines of the Comprehensive Plan recommends that industrial uses be located in close proximity to support services such as major arterials, truck routes, highways, utility trunk lines, rail spurs, and airports, and the subject property meets this Locational Guideline.
5. Impact of the proposed development on community facilities: No detrimental impacts on community facilities are anticipated.

BARFIELD The last time I remember seeing this the neighbors had several pictures showing non-conforming uses. You pointed out the one area where this has ceased. Have they cleaned up that area?

KNEBEL Yes, it is quite a bit cleaner then it was the last time MAPC considered this application.

BARFIELD You mentioned just that one area of the site. What about the other 3-4 areas that the neighbors brought us photos that needed cleaned up?

KNEBEL It is just the south half of the subject property, and they took photographs which looked like it was several different areas, but it was all in this 4-5 acre location. They did also show you photographs of the existing use as an illustration of what they didn't want on the subject property, which is a permitted use on their existing property.

GAROFALO Did the applicant get together with the neighborhood people and have a meeting? There is a hint here in the report that they got together.

KNEBEL I am not aware that there has been a meeting between the neighbors and the applicant. I was not invited to such a meeting.

MARNELL How about the height of material stored? Is there a limitation? It seems like the last time that was a real big issue.

KNEBEL That is Condition #6, which limits the height of stored material to 10-feet within 100-feet of the wall and 15-feet elsewhere. That would apply just to the subject property. The applicant is not offering that in their restrictive covenant for their existing property, and that issue came up at the District Advisory Board meeting.

MITCHELL So we would have two different conditions?

KNEBEL The voluntary restrictions that they are offering in a restrictive covenant on this property would be different than the Protective Overlay, and they would be enforced differently as well.

GAROFALO This proposed screening wall, where would it be?

KNEBEL The proposal on the subject property, the way that it is worded, is the wall will be constructed 50 feet north of the right-of-way line of 35th Street. They do not own all of the property down to 35th Street. I think it is a 16-foot reserve north of 35th Street that is platted as part of the residential neighborhood as a buffer strip, so it would be set back 34-feet from their south property line and then set back 50-feet from their west property line.

DUNLAP All the way down the west side and all the way across the south?

KNEBEL That is correct. Also in their restrictive covenant they are offering to construct the wall at 30-feet from the right-of-way line of 35th Street, which would be 14-feet north of their south property line, so there would be a jog to the south and across here (pointing).

GAROFALO How high of a wall?

KNEBEL Eight feet.

MITCHELL Do you know what the height of the existing wall is?

KNEBEL There is not a screening wall now, but the wall sample that they put up for people to see is an 8-foot wall.

PHIL MEYER, BAUGHMAN COMPANY This is the third time this case has been in front of MAPC. The first time we filed the case we were in violation of storing material, and we are not trying to hide that from anybody. At that point in time, we withdrew the case after the Planning Commission hearing. The applicant went out and cleaned all the material off of the area. We then filed another case, and that case processed through DAB and MAPC, receiving favorable recommendations from both. The City Council ultimately denied the request.

We have waited our one year time period to file the request again. When I first started this case I went out and looked at it, and you can still see where material was stored out there; where there was some concrete wash out. The applicant and I got into a conversation about whether should we clean all this up before we re-file the case, and I told the applicant that, in my opinion, we should leave it, and you could see where grass was growing up through it, and could see where that stuff had been there for the two year period since they first cleared everything off of it, and they hadn't been in that area. I didn't want to go out and disturb the area before we got back in front of the Planning Commission. I told him to leave it, and we will get it all cleaned up with the site plan if we are successful in the zone change and the platting. When we come in here, we will scrape all of that off, and we will get the wall up. I personally was concerned that if we went out there and start scraping some of that off there that the neighbors were going to think that we are up to something, and would take pictures to show that we are using it. So we just left the area alone.

We have provided a protective overlay. Basically, I went back through the first two cases, read the minutes, looked at what DAB, MAPC, Planning staff, and the Council member was saying, and we really tried to come up with a comprehensive list of what the issues were so we could address them. We have limited the uses. Two uses are allowed over here. We can store concrete products and materials, and we can have accessory structures that go with storing concrete products and materials. This screening wall was very important. This north half here (pointing) has a great hedgerow. The south half of that hedgerow is not near as strong, but I have passed around a sample of that wall. That is an 8-foot high wall, and it is constructed at this location right here (pointing). It is set 30-feet from the street, and here it will be set 50-feet from the street. Where there is a break in the existing trees we will go in there and plant a double row of plant material, and the plan will be approved by the Planning Director. I believe that will supply a nice buffer to the homes across the street here - something that they have not had to date. In the past, when they were using this illegally, they did not have that buffer, but when we get that screening wall and that plant material, I think that will be a nice buffer for the neighbors.

In talking to staff we agreed to a bike path along this west line. We are offering the easement only. There is really not a bike plan through this corridor, but at a later date it is a nice location for one. If it falls on the planning books as having a bike path, you will at least have this opportunity though this drainage corridor here to put that bike path in there.

We also did a restrictive covenant over the existing zoning. Basically, we addressed all the same issues that we addressed in the new piece with a few exceptions. We did not restrict uses. It is zoned Limited Industrial, and you can use it for any Limited Industrial use. We did not restrict the height that we can store material. We agreed to a screening wall, but we would like to place it at 30-feet rather than 50-feet. The sample wall that we have built is built at 30-feet.

They did a very good job of keeping this south line clean, but they found as they kept it cleaned up that not everything they were cleaning up was their problem. They were cleaning up material that was left there. Even when we showed up at DAB, within a day or two of them cleaning this up there was a mattress that was found sitting back here in this corner that we promised to go clean up, and we did that the next day. One of the reasons we don't want to go to 50-feet is we think that we will be creating more opportunity for people to be adding to stuff being dumped in there. Also, with that existing row of trees that runs through there and the eight-foot high concrete wall, it supplies a very nice buffer to this neighborhood to the south. If we get this approved, that concrete wall is a very good noise buffer to that neighborhood to the south, so it is protection for them.

We did agree to a no protest petition for paving. Basically, when we plat this piece of property here, we will sign a no protest petition, so that if at any date in the future the City Council decides to come into this area and do a paving petition, we will participate with our share. We do not have access to that road. We do not plan on using that road, but we did agree that we would supply that no protest petition. If they want to do something at a later date, they can.

We have a growing expanding business, and we do need this property to store material. Part of the complaint that we have from the neighborhood is the way that we are storing material on our existing property, and that's because we are out of space.

MITCHELL Do you know where the west property line is?

MEYER That would be the center of the ditch.

MITCHELL So you are talking about dedicating some number of feet of the centerline of the old Chisholm Creek?

MEYER The legal description is based on the center of the Chisholm Creek.

MITCHELL Do you know how much open space that is not on the slope or the bottom of the canal that would be available to build anything within that proposed dedication? My concern is that you are going to end up with only 5-6 feet usable property within that dedication.

MEYER I would tell you it varies. I don't know an absolute answer but we can look at the plat when it comes through. I would tell you it's probably between 15-20 feet, top of bank.

MITCHELL I would like to suggest that you make that a part of your subdivision plat, rather than sticking to a number now as to a dedication.

MEYER I have no problem looking at that when the plat goes through. If we have an area that is inadequate, we can address that with the plat.

MITCHELL Why did you chose 15 feet for the height of the stacked material?

MEYER I took it out of the minutes from the previous Planning Commission approval, and they approved 10 and 15 feet.

MITCHELL I think that figure will be insufficient for double stacking culverts, since many of them are eight feet high.

GAROFALO When the City Council turned it down was there a protest petitions filed?

KNEBEL There was pretty significant protest, and the City Council needed a 3/4 majority vote.

BARFIELD You mentioned that if you get this approved you were going to go in and clean the area up. If you don't get it approved, what assurance for cleanup or plans does the applicant have?

MEYER We will have to clean it up. I just did not want to dig up the ground three weeks before I filed the case. I did not want to pour fuel on the fire with the neighborhood. If anybody wanted to drive out there and look at it, you see the grass growing out of the concrete rubble that is there, so you know we haven't been out on it. Once I disturb that, you question whether we have been using it or not.

BARFIELD Do you have any anticipation as to how high it will be necessary for you to stack material in this area?

MEYER If it is not approved?

BARFIELD Either way. You are saying you don't have any restrictions on height.

MEYER There are no restrictions on height. Functionally, I am going to say if you get over 20 feet it starts getting non-productive.

BRAD WERTH, APPLICANT It will not be any higher than what it is right now today. At a certain point you get into a structural integrity issue with the product, and if you get too much weight stacked on top, it is not designed to take that so the loading itself will damage the bottom row of product. What you see today is basically as high it will go.

DUNLAP What services are available on that property that you are applying for?

MEYER I assume there is water on 37th Street. There is sewer in the back here, and they also have gas. When the plat comes through, you will see our detention facility located up here along 37th Street with a sediment barrier. When it fills up to a certain point it will drain into the creek.

GAROFALO If this is approved, is the plan to put the wall in prior to stockpiling materials?

MEYER Yes, we have agreed to put the wall up before we start storing in the area.

GAROFALO The existing chain-link fence will come out?

MEYER We have talked about taking it down.

KNEBEL It is required by Condition #7 to be removed.

CAROLLEA RAYL, 432 W. 35TH N., WICHITA KS 67204 Directly across the street from my bedroom is where all of this stuff was piled up. Every Saturday morning I listened to beep, beep, beep. The dust was everywhere. They were using the rock crusher, and that wall to me is not going to do one thing except make me feel more like I am in prison.

PHILLIP B. FITZMAURICE, 433 W. 35TH N., WICHITA, KS 67204 I live across the street. This was a nice neighborhood. Before they went in there with the illegal rock crusher, there was a prairie grass field, and now there is not. We don't believe the wall will be doing any good. We have to look at this every day. I am 150 feet from this operation. I work hard everyday as a custodian. My wife home schools, and the noise and dust is not good. Everybody south and west will have to look at the gravel. I don't

understand why a concrete crusher needs to be in a residential neighborhood. This is very unsightly. A concrete company is not limited industrial. It is full force industrial. You can't limit the dust, noise, trucks and machines. They may get rid of that rock crusher and may never bring it back, but you will still have dump trucks and constant noise from 6 a.m to 6 p.m. every day, six days a week. I think this is worth fighting for my wife and for my children that this operation will stop.

MCKAY Where do you live?

FITZMAURICE (Pointing) this was a very pretty grass prairie field, and all the noise that is associated with this operation you can't hide it through the trees.

SHERMAN How long have you been there?

FITZMAURICE I have been here since October 1995.

THOMAS J. MYSHKA, 3557 N. FAIRVIEW, WICHITA, KS 67204 (Mr. Myshka brought a big board with colored photos taped to it of the area and did not leave for the record) Thank you for listening to our concerns at this hearing and the previous two other times. The area to the west that I see through my windows has a bunch of limbs that are still there, and they are in a deteriorating condition. The ice storm that came through in January increased the number of dead limbs that are now falling down along this area, which is what they did not show you. There are power lines and limbs that are leaning on the power lines in that area that have not been taken care of. I have taken these pictures, and other ones similar to OCI twice since our last time being here and asked the OCI department to please look into them cleaning up the dead limbs in my area. I was told that is an industrial area and OCI has done nothing since the two times that I have filed a complaint. I am also concerned about the appraised value of my house, which was increased, but I am appealing my appraisal. Three homes sold in that area in the last year for \$4,000 less than the appraisal. This business has made promises in the past that they would clean up this area, and I would appreciate it if they would. This is a residential area and not an industrial area.

LEROY LEHMAN, 515 MANLO DRIVE, WICHITA KS 67204 Wichita Concrete Pipe Inc., is actually owned by a number of people who do not live in our community, and most do not even live in the State of Kansas. So do you imagine they are very excited about what is going on here? There are several Wichita working families living here, and we are subjected to the dust, noise, pollution of air and water, and the danger of the operation of the heavy-duty equipment. I am not sure how many new Planning Commissioners there are on this board. Wichita Concrete Pipe, knowingly, and willingly purchased land that they knew was zoned for residential occupation. They chose not to locate only a couple of miles east in an already established industrial area, which had deliberately been cleared of all residential occupants. This area has ample land available and is located by several sets of railroad tracks. This company turned residential use into a graveyard of broken concrete pipes, rusted rebar and trash of all descriptions, with rivers of raw cement dumped on the banks of Chisholm Creek. We are certain that if you grant this zoning change this company will simply revert to their former illegal operations. The screening fence is only 8 foot tall, yet the piles of pipe tower above it by what we guessed at 25 feet. Our homes are often modest, but they are the most significant purchase we will make in our lifetimes. The county is still raising our property valuations, but value and desirability of our homes is being dramatically lowered by the operation of the company. We respectfully request that this zone change be denied.

BARFIELD You talk about the operation of the concrete grinder running 24 hours a day, is that still taking place?

LEHAM No, they have discontinued running the machine since the first request came through and was denied.

PHIL MEYER We are not denying that we have had problems in the past. We shouldn't have had a rock crusher on this property at all. We have paid a price for that. We have a growing business that needs to expand on this property. There will not be a rock crusher on either one of these two sites. A rock crusher could not be allowed out here today. The neighbors are concerned that the wall will not help, but I do believe a wall will help knock down noise. A wall will do a lot for this neighborhood and should be a benefit, between putting the wall over here and restricting the height from 10 feet for the first 100 feet and 15 foot for the rest. With the existing tree row and the tree row that will grow down there, I think it will be a benefit. Storing concrete material over there, that does not come with the same noise. Our manufacturing will still occur over on this area of the site. We will have to go over to the other area with a forklift and place the material and that will be the noise that the buffer and landscaping will address.

We did not meet with the neighborhood. I have done this long enough, and I am not sure a meeting will have gotten us very far on this case. I will tell you that we put this case together with what we thought was everything. The protective overlay that we have prepared has a lot of restrictions on this property, and we also have come over and restricted existing uses that we have on our piece of property today.

SHERMAN What is the projected fill date of that use over there? When will you be at capacity in this new area?

MEYER I don't know that we will be at capacity. If this zoning is approved and we finish the plat, and we go in and construct the wall then we are able to come in here and start storing material. We have the detention pond up here at this facility, but with the ability to stack in here; I can't read the future. The business is growing and expanding, but I don't know that we will totally fill that area. We will be able to spread stuff out and not have to stack up as high. Which again the less we stack up, the more it helps the neighborhood with the noise and the visual impact.

TAPE CHANGE TAPE 2 SIDE A

BRAD WERTH, WICHITA CONCRETE PIPE INC., (OWNER/APPLICANT) Right now it is a situation where we are reaching our limits as far as our productive capacity as well as our storage capacity, and we don't have any plans to increase or put any more additional production facilities on the existing piece of property. All we are looking for is additional storage area.

SHERMAN How long have you all been there?

WERTH I am not exactly sure. I have not been with the company since its existence. I believe they purchased that piece of property in the early 1990's, and when they purchased it, it was zoned as it is today and there was no zoning change needed. Then they bought the other piece of property to the west in 1998-2000.

SHERMAN Was it already zoned industrial?

WERTH The piece of property that we are on now is zoned, and we purchased that property as it is today. We never went in and requested any zoning change on it, and then bought the piece of property to the west approximately five years ago.

MARNELL What are your hours of operations for the manufacturing facility area?

WERTH We start our first crew at 6 a.m., and we go until 6 p.m. We have never worked around the clock. The rock crushing operation did start really early and go late, but it was probably closer to 18 hours.

MARNELL On the storage of product in the parcel that is currently zoned residential, would you be willing to put restrictions on the hours that you store materials over there in terms that it would not be when people would be normally sleeping?

WERTH As long as it was a reasonable time allotment. There are certain processes that we go through. Normally what we do is that we will cast a product the day before. We go in and strip it out of the forms. The only problem that we would have is that we load trucks first thing in the morning for that day's shipments. You have to load the truck early to get it out. Contractors request deliver at 7:30 a.m. The early noise that they hear from the forklift and the back up alarms on the forklift is actually loading trucks and not directly associated with production. That could pose a little bit of a problem on that because we would store product over there, and then we would have to go over there to get the product to put it on a truck.

BARFIELD Why wouldn't the neighbors be suspect of your actions given the history in the past that you have had with them, and yet Mr. Meyer says that you didn't have any conversations with them.

WERTH We violated the zoning regulations on that piece of property. When it was brought to our attention that was being done, we went and cleaned up the property. We went through and tried to have the property rezoned. Before we went to City Council last time, we called a special meeting with all the neighbors to see if we could come to a mutual understanding with everybody. To be honest with you, the meeting went nowhere. It was nonproductive and got more into an accusation type of a meeting, and there was very little reasonable dialogue.

BARFIELD What are your plans for future expansion if you need more space?

WERTH Any future store space will be based on increased production. There are no plans as of right now to increase our production. Last year we added our productive capabilities by putting a crane on the existing piece of property. We built the crane on the very northeast corner of our property as far away from the neighborhood as we possibly could to keep the noise of production away from the neighborhood. We have no plans at this time to further increase our production. We understand an increase in production is going to be an increase in storage capacity, and we understand that we are out of space. I expect our overall business volume and our core business to decrease over the next few years. Our plans are to supplement that with new product lines and that type of thing.

WARNER If this is denied by MAPC or the City Council, is the fence on the existing south property line going to be built?

WERTH Yes.

WARNER Have you ever considered doing you storage on the green area to the east instead of to the west?

WERTH We do not own that property.

KNEBEL It is not properly zoned either.

GAROFALO Since you are in a great deal of production at this time and you are not using that west area are you storing any of your materials or product elsewhere?

WERTH We have a sister company called McPherson Concrete Products located in McPherson, Kansas. Ultimately what will happen is that if we can't get this property zoned correctly, what we will do is instead of creating jobs and opportunities in Wichita, we will do the production in McPherson.

SHERMAN Is it possible that the increased storage will give you the opportunity for increased production?

WERTH The logic of your question is yes it would, but the problem is that our production is not limited on the amount of storage area we have. It is limited on how quickly we can make concrete and how fast we can produce it and distribute it.

MCKAY Is there a reason why you couldn't do this storage part on the northern end of your property rather than the southern end?

WERTH That is where we produce our product, there are buildings there.

DUNLAP You were talking about a retention pond on the north end.

MCKAY I am talking about you have a large space, that retention pond is going to be how much?

WERTH You mean transfer the retention pond back here? I suppose that is feasible. That is a question that the engineers would answer rather than us.

MCKAY It seems the neighbors that are in opposition all live down around the south end, and you do have a large open area at the north end. I think you should just reverse the layout.

WERTH The reason we were putting the retention pond on the north end is because presently our piece of property drains so the general slope of the land is this way. I don't know if it would be feasible to try and change the grade of the existing piece of property and move everything south.

MARNELL It sounds like you are planning on storing your materials starting from 35th Street moving north as opposed to starting closer to 37th and coming south, so that the last place you would be putting material would be the south end.

WERTH We have no problem starting at the north end.

MCKAY What I was trying to get at was that, unless it was a real drainage problem, the drainage could be channeled down to a retention pond on the south end.

MEYER There are two reasons we put it up here. It is a buffer to the arterial because we figured if we started stacking and storing up here, we would have problems like we have down here. Also, the existing facility their existing stuff comes to this pond, so it is not a big move to this new pond we are doing right here (pointing) will cover the existing facility since it already comes to there. We could put it at the south end, but we thought it was a better solution up here. If you want to suggest that we start storing at the north end and move south, that does not bother us. We also can move the pond if you want us to.

MCKAY I don't know why you couldn't put a swale between the two existing properties to a retention pond down in the south area where the people are doing all the complaining.

WERTH We could because are initial storage is going to go to the north anyway. We will come out of our manufacturing facility and take the shortest route to store a piece of product.

MCKAY Right, because your manufacturing is to the north. If you put the retention on the south, you will have a natural buffer.

BARFIELD Regarding Condition #6 talking about the height they store the products shall be limited to 10 feet within 100 feet of the wall and 15 feet elsewhere, he is already saying that the storage height will be approximately 19-20 feet. That is a conflict right there.

DUNLAP Phil, are you going to request a change on that from 15 to 19 feet?

MEYER No, if we have to double stack it will have to occur on the existing piece of property. We are not going to change our request.

DUNLAP We cannot operate a concrete plant adjacent to residential property, and it is. I happen to own that residential property to the east, and I am not going to object. I also own the connecting piece out to Broadway. The white strip you see down from 37th Street is Park Place right-of-way, which has been vacated, and there are buildings built on it. That one white square in the middle is a residential piece of property that I own, and I don't object, and I don't need an eight-foot wall. I will make it plain here that I don't have any financial interest in his company, nor do I have anything to gain from the decision of the MAPC on this particular application.

BARFIELD I have a problem with the statement that you just made. You first said we cannot operate this concrete plant in a residential neighborhood, so it doesn't make any difference whether or not anyone is objected to it if we have rules, guidelines and policies that say that we can't do it.

DUNLAP The problem is how it got that way. It is there, and it was an oversight or a mistake by a former Planning Commission long before I bought the property, which was 25 years ago. I would much prefer that you would rezone that industrial, and I would not have to pay a fee to do that, but that is not the way it is today.

MCKAY Phil, can you without a lot of problems change the drainage of the retention pond from the north end to the south end of the property?

MEYER I can make it happen.

MCKAY Phil, what size of an area are you talking about for the retention pond?

MEYER It is about 1 acre.

MCKAY Mr. Werth, would you be opposed if we suggest that in your platting process move the retention pond to the south, and you stay back 50 feet from that retention with stacking of any materials, which will be about 150-200 foot from the south property lines?

WERTH Do you want the retention inside the fence or outside the fence?

MCKAY The retention would be inside the fence.

WERTH I have no problem putting the retention pond at the south end of the property, but I don't understand why there is a limit on how close I can stack to the retention pond.

MCKAY Would you say yes, we will try to do that?

WERTH You don't give me a lot of choice.

MCKAY I am saying to you that you have a plat, and I can't do a plat today.

MEYER The retention pond you are wanting is going inside the wall, so the wall would be set 50 feet off of the property line and then we are going to do the retention pond.

MCKAY As far as I am concerned move the fence to the property line.

MEYER That is what I am trying to clarify here, because we are already giving 50-foot on the property line.

GAROFALO The storage would be starting at the north?

MCKAY If you can envision moving the fence to the property line on the south, put the retention pond on that area there, and don't start storing anything within so many feet of that retention pond, say 50 feet, but don't give up the 50 feet for the wall.

MEYER We can make that happen.

MARNELL I am going to support this change that Commissioner McKay is suggesting. I see that this is zoned residential currently given the fact that piece is Limited Industrial there, and given the use that has been there for a long time. That will not be developable as residential land, so we would be killing the use of that land. I think this is a good compatible use and it will provide a good buffer for the area and still allow the land to be used.

MCKAY I will need some help with the motion. John, would that be a condition of the zoning or is that a condition of the platting process?

SCHLEGEL If it is something that you want to see on the plat you will probably want to attach it as an condition to this application.

MOTION: Approve subject to that the applicant no longer gives the 50 feet of the southern portion, and the wall can go on the property line, and that the retention go on the south end of the parcel, and that on the plat there will be some distance between the retention and where the storage has to stop 20-50 feet. Also that they start storage from the north.

MCKAY moved, **MARNELL** seconded the motion.

MITCHELL He has a limit on height in the conditions now. Shouldn't we just have him go ahead and meet those?

MCKAY I am talking about the distance from the pond where storage can be.

KNEBEL I need some clarification. You indicated that you would put the wall on the south property line are you talking about eliminating the landscape buffer requirement that is mentioned in Item 3?

MCKAY I think they are doing that by putting in the wall and putting the retention pond down at the south of the Parcel.

KNEBEL There is a code requirement for a landscape buffer. Is that the standard that you are wanting as opposed to what is proposed by the applicant, which is something greater than the standard?

MCKAY Is the wall and the pond considered a landscape buffer?

KNEBEL No, a landscape buffer requires tree planting, and what the applicant proposed is a greater number of trees than what is required by the code.

SCHLEGEL Does a landscape buffer have to be between the property line and the wall?

KNEBEL No, it can be on the inside of the wall, but it has to be within 15 feet of the property line. It requires a tree planted every 40 feet; whereas, the applicant has proposed twice that.

MCKAY I say that we waive the landscape requirement because to me they are doing landscaping with the wall and the pond.

KNEBEL The Planning Commission does not have the authority to waive the landscape requirement. I am just asking if you are waiving the extra landscaping the applicant has offered, and then the standard Code would apply is what I am trying to clarify.

MITCHELL Can you do that and put the wall on the south property line at the same time?

KNEBEL Yes, the landscaping can be on the inside of the wall

MCKAY Let's say they want to put it on the outside of the wall.

KNEBEL It can be on either side.

MCKAY Can it be in the right-of-way?

KNEBEL No, it has to be on their property.

MCKAY So the applicant will have to provide a 5 foot wall easement and then it can go in the 5 foot wall easement.

KNEBEL It can be on either side of the wall. The landscaping requirement is a tree every 40 feet, and it has to be a shade trees, which is different than what Condition #3 states.

MCKAY What I am saying is they put the wall right on the property line then they would not have any place to meet the landscaping requirement. If they have 5 foot wall easement on the property line then they would have space to take care of the requirement. What I am saying is that have the applicant provide a easement for both the landscaping and the wall on the south property line.

MARNELL Commissioner McKay, Scott said that putting a tree every 40 foot would satisfy the requirement, and they would be inside the wall and the property owner would be able to maintain the landscaping.

MCKAY With a five foot easement they could either go inside the 5 foot or outside.

BARFIELD On Condition #2 it says the wall will be setback a minimum of 50 feet of the west property line.

MCKAY We are waiving that.

BARFIELD Then it says the landscape buffer can planted between the wall and the property line.

MCKAY In my opinion if the applicant can simply move those back and get it further away from the neighborhood.

MARNELL I thought the west property line was the center of the creek, so on the west it needs to remain the same and the south needs to be determined.

MEYER This may be easier. On the existing property, we want to construct that wall, and we will do a 30 foot buffer all the way along the south line in order to keep the existing hedgerow intact that sits right here (pointing). We could put the retention pond at the south end as a compromise for the 20-foot buffer that we are getting back. We could put the retention pond either in the south or the southwest corner, which will help protect this neighborhood more, so we will keep the 50 feet along the west line and go the 30 feet along the south line and move the retention pond to the southwest corner of the facility.

MCKAY I agree to that.

MARNELL The second agrees to add that change.

KNEBEL We are still going to give up on doubling the landscaping?

MCKAY We are not going to make a double landscaping requirement, just normal landscaping requirement.

SCHLEGEL If they are 30 feet back from the right-of-way line, they are still 14 feet inside their property line.

KNEBEL The reason I am asking is because they have already volunteered to double it on their existing property.

MITCHELL We still need to clarify that the easement that you are giving on the west side 50 feet may not be the magic number.

MEYER There may be a number during platting where you tell me that I have to bump that wider to get a bike path there. There is an existing hedgerow right here, and that meets the double tree requirement.

KNEBEL As long as it is on your property.

MEYER So we are there, and for Commissioner Mitchell's point, if I have to expand 50-foot over here somewhere to make sure that I have adequate room at the top of the bank, then I will do that during the platting process.

AMENDED MOTION: Recommend approval, subject to the following provisions of Protective Overlay District #156:

1. The subject property shall be limited to the following uses: (a) Outdoor storage of concrete products and materials related to the manufacturing of concrete products; and (b) Accessory structures and uses related to the storage and/or maintenance of stored materials and products. This condition specifically prohibits the use of the subject property for the following uses: Asphalt or Concrete Plant, Manufacturing, Mining or Quarrying, and/or Rock Crushing.
2. A concrete/masonry wall at least eight feet in height shall be constructed parallel to the south and west property lines of the subject property. Said wall shall be set back a minimum distance of 50 feet from the west property line and 30 feet from the north right-of-way line of 35th Street North.
3. There shall be a 50-foot landscape buffer maintained along the west line of the subject property in conjunction with the solid screening wall. This buffer shall provide the equivalent of, at minimum, one tree per 20 feet. The existing tree rows may be used to meet the condition of one tree per 20 feet if the existing trees are located on the subject property. Where there are gaps, a double staggered row of a mixture of evergreen and deciduous trees shall be installed with one tree per 40 feet in each row with the planting size of the trees meeting the requirements of the landscape ordinance. The landscape buffer provisions of the Landscape Ordinance shall apply along the south property line.

4. At the time of platting the applicant shall dedicate a 50-foot wide bike path easement along the west line of the subject property.
5. The detention pond required by the plat shall be located at the south end of subject property.
6. Storage of concrete products and materials shall commence at the north end of the subject property and work southwards.
7. A site/landscaping plan for the screening wall and landscape buffer shall be submitted for approval by the Planning Director within 60 days of approval of the zone change request. The subject property shall be developed in general conformance with site/landscaping plan, and all improvements shown on the plan shall be completed prior to use of the subject property for the storage of concrete products.
8. The height of stored concrete products shall be limited to 10 feet within 100 feet of the wall and 15 feet elsewhere on the property.
9. The existing fence, trash, and debris along the south and west property lines shall be removed prior to use of the subject property for the storage of concrete products.
10. Upon development of subject property any blowing dust shall be minimized by routinely spraying water on unpaved surfaces.
11. No off-site or portable signs shall be permitted.
12. At the time of platting the applicant shall submit a No Protest Agreement for the future paving of 35th Street North.
13. The subject property shall be platted within one year but prior to use of the subject property for storage of concrete products. The plat shall include an approved drainage plan that prevents the run-off of any concrete products or materials into the adjacent creek on the west.
14. Within 60 days of approval of the zone change request, a voluntarily-offered restrictive covenant shall be submitted that places requirements A-G as stated in the letter from the applicant's agent dated April 4, 2005 and revised April 14, 2005 on the applicant's existing property to the east.

Vote on the AMENDED MOTION carried 9-1. (SHERMAN opposed)

7. **Case No.: ZON2005-14** – PMA Inc., Paul J. Foley Jr.; MKEC Engineering Consultants Inc. c/o Greg Allison (agent) Request Zone change from "LC" Limited Commercial to "SF-5" Single-family Residential on property described as;

A tract of land in the East half of the Southeast Quarter of Section 8, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, more particularly described as follows:

Commencing at the Southeast corner of said Southeast Quarter; thence along the South line of said Southeast Quarter as shown on Kansas South Zone Grid bearing of S 89 degrees 04'47" W, 600.00 feet; thence parallel with and 600 feet West of the East line of said Southeast Quarter, N 00 degrees 53'35" W, 416.89 feet to the Point of Beginning; thence N 00 degrees 53'35" W, 183.11 feet to a point 600 feet North of said South line; thence parallel with and 600 feet North of said South line N 89 degrees 04'47" E, 224.09 feet; thence S 26 degrees 32'56" W, 133.03 feet; thence S 89 degrees 04'47" W, 99.83 feet; thence S 43 degrees 08'45" W, 90.57 feet to the point of beginning. Generally located On the northwest corner of Webb Road and 13th Street North.

BACKGROUND: The applicant requests a zone change from LC, Limited Commercial to SF-5 Single-family Residential on a .57 acre unplatted tract located west of Webb Road and north of 13th Street North. The site is developed with a single-family residence. The applicant recently sought and obtained a rezoning and CUP (DP-282 The Foliage Center Commercial Community Unit Plan) on property southwest of this application area. This request is a downzoning, which the applicant offered during his previous request for commercial zoning and a CUP.

North and west of the application area is SF-5 zoned property under the same ownership as the application area. Southeast of this site is LC zoned vacant property recently approved for a CUP. Further south, across 13th, is a GO General Office and LC zoned office park. Further south, the Collegiate School fronts Webb Road. East of the application area, across Webb is the LI Limited Industrial zoned Waterfront commercial development and lake.

CASE HISTORY: The property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-5"	Single-Family	Vacant, single-family residential
SOUTH:	"LC"	Limited Commercial	Vacant, office park
	"GO"	General Office	
EAST:	"LC"	Limited Commercial	Vacant, commercial and office
	"LI"	Limited Industrial	
WEST:	"SF-5"	Single-Family	single-family residential

PUBLIC SERVICES: 13th Street North and Webb are both four-lane arterials at this location, with a central turn lane at the intersection. Existing half width right of way (ROW) on 13th Street North is 50 feet tapering to 75 feet at the intersection. The CUP proposes a 10-foot dedication on this portion of 13th Street. Existing half width ROW on Webb is 60 feet tapering to 75 feet at the intersection.

Current traffic counts on 13th Street North at this location are 9,619 vehicles per day. Current traffic counts on Webb at this location are 16,338 vehicles per day. The 2030 Transportation Plan calls for 13th Street and Webb to remain four-lane arterials at this location, the CIP does not have any future projects for this location.

All other normal public services are available on the site.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies the application area as appropriate for "commercial" development, reflecting the current zoning.

RECOMMENDATION: Staff acknowledges that the application area is developed with a single-family residence, and was left out of the recent CUP request. The applicant wishes to alleviate any anxiety among surrounding homeowners that this site will not be developed for commercial use.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: A mix of zoning exists in the neighborhood, ranging from SF-5, GO, LC and LI. Uses are mixed as well, reflecting the mixed zoning pattern: vacant, single-family residential, office, school, retail commercial, and industrial. The proposed SF-5 zoning is in character with the immediately surrounding single-family neighborhood to the north and west of the application area.
2. The suitability of the subject property for the uses to which it has been restricted: The property to be rezoned is currently developed with a single-family residence, which is a permitted use in the LC zoning district. SF-5 zoning is more suitable than the current LC zoning for the existing single-family residential use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The requested downzoning to SF-5 will increase restrictions on the application area, and will have no negative effect on nearby property.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies the rezoning area as appropriate for "commercial" development, which is not in conformance with requested zoning.
5. Impact of the proposed development on community facilities: The change in zoning on the application area will not change the existing single-family residential use. The proposed zone change will have no impact on community facilities.

MOTION: Approve subject to staff recommendations.

DUNLAP moved, **WARNER** seconded the motion and it carried 10-0.

8. **Case No.: DR2005-14** – Request The City of Colwich seeks annexation of Road Rights-of-Way, Railroad Right-of-Way and land adjacent to The City of Colwich

Background: On April 11, 2005, the City of Colwich passed Resolution No. 403 authorizing a public hearing on June 13, 2005 for the purposes of considering the unilateral annexation of two road right-of-way segments, one railroad right-of-way segment and two tracts of lands located adjacent to the limits of the City.

The proposed annexation areas fall within the Small City Growth area around the City of Colwich, as designated within the Wichita-Sedgwick County Comprehensive Plan *Preparing for Change*, adopted and updated by the Metropolitan Area Planning Commission and the Board of County Commission in 2002.

Analysis: Kansas statutes governing unilateral annexations provide for official notification to certain local officials, including planning commissions having jurisdiction in the area. Additionally, Kansas statutes require that the planning commission review the proposal and make a finding of compatibility or incompatibility with any adopted land use or comprehensive plans related to the area and the annexing city.

After review by staff, it has been concluded that the proposed annexation areas are consistent with the intent of the Wichita-Sedgwick County Comprehensive Plan.

Recommended Action: That the Metropolitan Area Planning Commission find the unilateral annexation proposed by Resolution No. 403 of the City of Colwich to be consistent with the adopted Wichita-Sedgwick County Comprehensive Plan

Attachments:

Attachment No. 1 - Resolution No. 403 and map.
Attachment No. 2 - Sedgwick County Development Guide (01/02)

MITCHELL Is there a services plan submitted with this application?

BARBER No, it is not submitted to us but the resolution indicates that it is available for inspection during regular office hours at the City of Colwich.

MITCHELL I will not support the annexation.

MOTION: To ratify the annexation.

DUNLAP moved **BARFIELD** seconded the motion and it carried 8-1. (**MITCHELL** opposed).

The Metropolitan Area Planning Department informally adjourned at 4:13 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2005.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)